IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

CRL.A.No. 551 of 2003()

SC.195/2002 of ADDL.SESSIONS COURT (ADHOC)-II, KOTTAYAM

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APPELLANT: ACCUSED

JAMES, SON OF KURUVILLA, IDUKKUTHARA HOUSE, NEENDOOR, ONAMTHURUTHU, KOTTAYAM.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRE THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Criminal Appeal No.551 of 2003

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Dated this the 10th day of April, 2007

J U D G M E N T

The accused in Sessions Case No.195/2000 of the Additional District and Sessions Court, Fast Track Court (Ad hoc-II), Kottayam, is the appellant. He was found guilty of the offence punishable under Section 304 part (ii) of the Indian Penal Code and was, therefore, convicted and sentenced to undergo rigorous imprisonment for three years and pay a fine of rupees twenty thousand, in default to undergo simple imprisonment for sixty days, and there was a direction to pay half the amount of fine, if realised, to the legal heirs of the deceased Jayan and remaining half to be paid to the legal heirs of deceased Krishnan. The said conviction and sentence are under challenge, through this appeal.

2. The prosecution case in brief is that deceased Jayan and Krishnan, along with PWs.3 and 4, were engaged in the arrangements, in connection with the “Kalasa pooja” at Devi Temple, Kothanelloor, on 24/12/1999. PW.2 was doing the

painting work. In connection with the festivities, PWs.3 and 4, along with the two deceased persons, went to the pond to collect lotus flowers. First, Jayan entered and plucked flowers and was returning. But immediately, he came into contact with the electric live wire and was electrocuted. He cried aloud. PWs.3 and 4 were not proficient enough to enter the water and, therefore, they informed Krishnan, who was in the car, in which, all of them went to the pond for plucking lotus flowers. On getting information, Krishnan, rushed to Jayan. But, the latter was also electrocuted on he touching Jayan. PW.3 had put the stump of the coconut leaf, in his attempt to draw out the electrocuted persons, but there was spark. Hence, all of them, PWs.3 and 4, ran to the house of the accused and asked him to switch off the power supply. Thereafter, they came back and found that the electrocuted persons, Jayan and Krishnan, were dead. Subsequently, PW.2, went to Ettumanoor Police Station and gave Exhibit P3, First Information Statement, to PW.12, the then Assistant Sub Inspector of Police of that Police Station, who recorded the same and registered Exhibit P3(a), First Information Report, under caption 'unnatural death'. The steps

according to law were taken. PW.12 conducted Exhibit P5 inquest on deceased Krishnan. PW.13 conducted Exhibit P4 inquest on Jayan. PW.1 was the Lecturer of Forensic Medicine at Medical College, Kottayam. He conducted the autopsy on the bodies of Krishnan and Jayan and issued Exhibits P1 and P2 postmortem certificates, respectively. PW.14, the Circle Inspector of Police, conducted the investigation. He also drew up Exhibit P10 scene mahazar. PW.16 was engaged to take photographs of the scene, including the bodies. PW.17 is the Assistant Engineer of local station of the Kerala State Electricity Board, who gave Exhibit P14 report regarding the electric connection to the appellant, basing on the local inspection conducted by him. PWs.9 and 10 are the District Electrical Inspectors of the area. PW.10 issued Exhibit P8 certificate showing that the accused was responsible for unauthorised construction of electric fence and giving electricity supply to the said fence. He came to this conclusion from his local enquiry and from the statement of the witnesses. PW.15, the Circle Inspector of Police completed the investigation and laid the final charge under Section 304 Part (i) of the I.P.C.

3. To prove the fence, the prosecution examined 17 witnesses and marked 14 documents. Thirty-one material objects were also marked and identified. It was after appreciating these evidence, the lower court convicted and sentenced the appellant as stated above.

4. The counsel for the appellant argued that there was no charge framed by the court against the appellant that the deceased persons died of electrocution. There was also no charge on the appellant that it was he who was responsible for putting the electric fence, passing electricity to the fence, and took unauthorised electric connection. Another contention of the counsel is that the prosecution had completely failed to prove that the material objects like wires and other implements, collected at the time of preparation of Exhibit P10, scene mahazar, by PW.14, were either belonging to the appellant, or used by him for causing the alleged death of the deceased persons. The counsel, therefore, submitted that the findings of the court below are unsustainable and, hence, prayed that the appeal may be allowed and the appellant may be acquitted.

5. The learned Public Prosecutor, however, submitted that Exhibit P8 report shows that it was the appellant, who had used the electric connection of his pump house, for passing electricity to the electric fence, unauthorisedly put up by him and, Exhibit P10 scene mahazar reveals the materials used for the said purpose. Therefore, prayed that the prosecution has proved the case against the appellant, as required by law.

6. I have gone through the evidence on record. The prosecution has got a case that PWs.2, 3 and 4 and the deceased persons were engaged in connection with the festivities of the local Devi Temple. It was in connection with the same that they came to the pond, where lotus flowers were available, so that the same could be collected for the use in the temple. As stated above, after plucking lotus flowers, Jayan was returning and he was electrocuted. On information, Krishnan also went there and he was also electrocuted. Both of them died.

7. The point that arise for consideration is, what is the charge that the appellant has to answer, as framed by the trial court. The court framed the charge as follows:-

> "That you, on or about 24/12/1999, at 10.30 p.m at Neendoor Kara in Onamthuruthu Village, caused the death of (1) Jayan, aged 26 years, S/o. Raghavan Nair, Olickal Veedu, Kothanelloor, (2) Krishnan aged 26 years, S/o. Narayanan Nair, Niravathu Veedu, Kothanelloor, with the knowledge that your act was likely to cause death and thereby committed an offence of culpable homicide not amounting to murder, punishable U/s.304, Part I of the Indian Penal Code and within the cognizance of this court.
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> And I hereby direct that you be tried before this court on the said charge."

8. Even if the court charge is a mistake, the same could be corrected at the appellate stage also, provided, there is other evidence available to show that it was the accused and accused alone who had committed the offence of putting up the unauthorised fence, passing electricity through that fence, thereby endangered the life of others, who came into contact with the said fence, and thus committed culpable homicide not amounting to murder.

9. PWs.3 and 4 are the persons who were with the deceased persons and who were, prior to and after the

occurrence, available in the scene of occurrence. PW.2 came to the place of occurrence on information that two persons were electrocuted. In Exhibit P3, F.I.S., as well as in the oral evidence of PWs.3 and 4, there is nothing available to show that as to who put up the fence and passed electricity through it. I could not find any material on evidence revealing that there was a fence at all, as alleged by the prosecution. Exhibit P8 report, submitted by PW.10 cannot be accepted, for he cannot come to his own conclusion that it was appellant who did the act of putting up the fence and passing the electricity through it. The investigating officer has to investigate and come to an independent conclusion and such witnesses from whom he collected the materials have to be placed before the court. Only after cross-examination of those witnesses, and appreciating the entire evidence the court can come to a clear finding whether the act alleged against the appellant has been proved or not.

10. The lower court discussed the facts and came to the conclusion that the property belongs to the appellant. PW.7, the local Village Officer, gave Exhibit P6 ownership certificate. Merely, because the appellant is in possession of the property

and he is having the consumer number, for the supply of the electricity by the K.S.E.B, as deposed by PW.17, cannot be the sole reason to come to the finding that he used the said electricity to pass through the fence. Although during Exhibit P10 scene mahazar, PW.14, the Investigating Officer collected lot of materials from the place of occurrence, nothing had been brought out to fasten the appellant with the said materials so collected, during the preparation of Exhibit P10 scene mahazar.

11. To prove the offence under Section 304 I.P.C, the prosecution has to establish that there was a death of human being. In this case, Jayan and Krishnan died. There is no challenge of the evidence of PW.1 and Exhibits P1 and P2 postmortem certificates in respect of Krishnan and Jayan.

12. The next point, the prosecution has to prove is that the death of Krishnan and Jayan had been caused by the appellant, by doing an act with the intention of causing death or with the intention of such bodily injury, as is likely to cause death or with the knowledge that he is likely, by such an act, to cause their death. Neither the evidence of PWs.9 and 10, the District Electricity Inspectors nor Exhibit P8 report of PW.10,

can be accepted and acted upon. The prosecution has to clearly prove that the accused has put in an unauthorised fence, took electric connection from the allotted source of electricity, as certified by PW.17, in his P14 report, passed electricity through the fence, thereby, caused the death of both the persons, and he did so, intentionally or knowing that his such act would cause their death.

13. As discussed above, none of the witnesses had deposed that the appellant had put in any fence, passed electricity from his house or from his pump house to the said fence and, because of the passing of the electricity through this alleged fence, Krishnan and Jayan, who went to pluck lotus flowers from the pond were electrocuted. Neither PWs.9 and 10 nor PW.17, the experts connected with the Electrical Inspectorate and the Assistant Engineer of the local K.S.E.B could depose that there was any fence, through which electric connection could be passed, or any material used for taking electric connection from the electric supply used by the appellant. It can thus be seen that the prosecution has failed to prove that the death of Krishnan and Jayan were due to any

intentional act of the appellant, in passing electricity through the fence put in by him, or the appellant did any act with the knowledge that the same would likely to cause the death of anyone.

14. As rightly argued by the learned counsel for the appellant, after the electrocution of both the persons, none of the prosecution witnesses, PWs.2 to 4, had seen any electric fence in the area. One obvious question that arises is, as to how the electrocution was stopped, after the switching off of the power supply from the house of the appellant. But there is no evidence available beyond the shadow of doubt that it was the appellant, who had passed the electricity to any object, with the intention of causing the death of human beings or causing such bodily injury as is likely to cause death. Therefore, that aspect also do not help the prosecution. I have gone through the evidence of PW.10. Except saying that the appellant had taken unauthorised connection to the fence, he did not elaborate. He had no material with him to substantiate his statement, except deposing that he got that information on his local enquiry from the statements of the witnesses and his own findings. The same

cannot be accepted as stated before the investigating officer or deposed before the court. PW.14 also speaks on the same tone, but without any legal corroboration.

15. To convict a person, the prosecution has to prove the offence alleged against him beyond the shadow of doubt. Mere surmises, conjectures and conclusions cannot substitute the legal evidence required under the criminal law. The evidence should be either direct or through circumstances. If it is direct, it should be oral or/and documentary. In this case, I do not find that the evidence of PWs.2 to 4 are sufficient to come, in any way, to any finding, establishing the ingredients required under the offence alleged against the appellant. The documentary evidence available are also absolutely insufficient to come to any definite finding against the appellant.

16. In the event of circumstantial evidence, the prosecution has to prove each link connecting the offence against the accused and no one else. In the case at hand, there is absolutely no circumstances made available before this Court to show that the appellant was, in any way, connected with the putting up of the fence, passing of the electricity through the

said fence, with an intention or knowledge, as legally required under the offence alleged against him.

17. In view of the above discussions, I hold that the prosecution has failed to prove the case under Section 304 Part (ii) I.P.C as found by the learned Additional Sessions Judge. Therefore, the conviction and sentence passed by the learned Addl.Sessions Judge is set aside. The appellant is set at liberty forthwith, cancelling his bail bond.

18. All the documents seized during the search of the house of the appellant by PW.14, shall be returned to the appellant, without any delay, on receipt or production of a copy of this judgment.

This appeal is allowed as above.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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Crl.A.No.551 of 2003

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J U D G M E N T

10th April, 2007